82 - 2163

NO.

in the Supreme Court of the United States

DOLORES BALL GARBIN,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

JOSEPH A. VARON, ESQUIRE
VARON, BOGENSCHUTZ,
WILLIAMS and GULKIN, P.A.
2432 Hollywood Boulevard
Hollywood, Florida 33020

Telephone: (305) 923-1548
Counsel for Petitioner

QUESTION PRESENTED

THE TRIAL COURT'S RULING DENYING PETITIONER HER RIGHT TO PRESENT A WITNESS IN HER FAVOR AND ON HER BEHALF CONSTITUTED A VIOLATION OF DUE PROCESS OF LAW WITHIN THE PURVIEW OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION.

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TABLE OF AUTHORITIES

NO.

in the Supreme Court of the United States

DOLORES BALL GARBIN,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

TO: Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

Petitioner, DOLORES BALL GARBIN, prays a Writ of Certiorari issue to review a Final Judgment of

the Fourth District Court of Appeal of the State of Florida which Court affirmed, without opinion, the conviction of the Petitioner by a jury of the criminal offense of Murder in the Second Degree.

In her appeal to the Fourth District Court of Appeal of the State of Florida, Petitioner raised, as one of her points of law, the issue of the Trial Court's ruling precluding Petitioner from calling, as a defense witness, an expert witness whose testimony was relevant to the theory of defense to the charge, to-wit: self defense.

The Fourth District Court of Appeal issued its decision in the form of Per Curiam Affirmed. (App.1)

Petitioner filed a Motion for Rehearing in which Petitioner reiterated the critical point and urged the Court of Appeal to issue a written opinion which would afford Petitioner the opportunity to seek review by the Florida Supreme Court. (App.2)

The Petition for Rehearing was denied by the Court of Appeal. (App.3)

Thereafter, a mandate was issued by the Fourth District Court of Appeal giving finality to the Petitioner's Appeal in the State Court. (App.4)

JURISDICTION OF THIS COURT

This application for certiorari is filed within sixty (60) days of the mandate issued by the Fourth District Court of Appeal of the State of Florida on April 29, 1983.

The jurisdiction of this Court is invoked, made and conferred under Title 28 U.S.C. §1257(3) and this Court's Rules 17 through 23.

CONSTITUTIONAL AMENDMENTS INVOLVED

SIXTH AMENDMENT

The Sixth Amendment to the United States Constitution provides, inter alia:

> "In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor . . . "

FOURTEENTH AMENDMENT

The Fourteenth Amendment to the United States Constitution provides, inter alia:

> " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . . "

STATEMENT OF FACTS

Petitioner, DOLORES BALL GARBIN, was charged by Information by the State of Florida for the offense of Murder in the Second Degree, the victim being Petitioner's husband, in violation of Florida Statute 782.04(2).

The Petitioner's defense to the charge was Justifiable Homicide, to-wit: self defense.

Prior to the Petitioner calling any defense witnesses, the prosecutor made an *ore tenus* Motion in Limine to exclude the proposed testimony of a defense expert witness, Doctor Jess Cohn, a psychiatrist.

The Trial Court allowed the Petitioner to proffer the testimony of its expert witness, but after receiving the proffered testimony, it entered an Order granting the State's Motion in Limine thereby precluding Petitioner from calling the psychiatrist as a defense witness.

The thrust of the proffered testimony by the expert defense witness was to explain to the jury the emotional condition and fears of the Petitioner at the moment the offense occurred; the emotional condition and the reasonableness of her fears were germane to the defense of self defense, but Petitioner was denied the right to call the psychiatrist to testify.

The jury returned a verdict finding Petitioner guilty of Murder in the Second Degree.

The verdict, judgment of conviction and sentence were appealed to the Fourth District Court of Appeal

of Florida who affirmed the conviction *per curiam*. A Petition for Rehearing was filed with the Court of Appeal (App. 2) which the Court denied. (App. 3)

REASONS FOR GRANTING THE WRIT

There was and is authority in the State of Florida for the Court to have allowed Petitioner to call her psychiatrist as a defense witness.

In *Hawthorne v. State*, 408 So.2d 801 (Fla. 1st DCA 1982), *cert. den.* ____ So.2d ____ (Fla. 1982), the Court of Appeals held that expert testimony would have been offered in order to aid the jury in interpreting the surrounding circumstances as they affected the reasonableness of the belief of the accused at the time she shot her husband.

In the matter *sub judice*, as in *Hawthorne*, Petitioner raised self defense as a defense. Accordingly, the specific defense of self defense requires a showing that the accused reasonably believed it was necessary to use deadly force to prevent imminent death or great bodily harm to herself.

By granting the State's Motion in Limine, the Trial Court abused its discretion and denied Petitioner her right under the Sixth Amendment to present a witness whose testimony was relevant and material to the theory of defense. See, *Washington v. Texas*, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967).

CONCLUSION

The ruling by the Trial Court excluding the testimony of a defense witness whose testimony would have been relevant, probative and material to the defense denied Petitioner her rights under the Sixth Amendment to the United States Constitution.

Because there was existing case law authorizing the Petitioner calling the expert witness as a defense witness, the ruling by the Trial Court was an abuse of discretion and constituted a denial of due process.

The Writ of Certiorari should be granted and the judgment of conviction should be reversed and remanded for a new trial.

Respectfully submitted,

VARON, BOGENSCHUTZ,
WILLIAMS and GULKIN, P.A.

BY /s/ HARRY GULKIN

HARRY GULKIN
Attorney for Petitioner
2432 Hollywood Blvd.
Hollywood, FL 33020
Telephone: (305) 923-1548

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have mailed three (3) copies of this Petition for Writ of Certiorari to Honorable Jim Smith, Attorney General of the State of Florida, The Capitol, Tallahassee, Florida 32301, this day of June, 1983.

/s/ HARRY GULKIN
HARRY GULKIN

Appendix

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

JANUARY TERM 1983

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING PETITION
AND, IF FILED, DISPOSED OF.

CASE NO. 82-537

DELORES B. GARBIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Decision filed March 2, 1983

Appeal from the Circuit
Court for Broward County;
Stanton S. Kaplan, *Judge.*

Harry Gulkin of
Varon & Stahl, P.A.,
Hollywood, for appellant.

Jim Smith, *Attorney General*,
Tallahassee,
Stewart J. Bellus
and Joy B. Shearer,
Assistant Attorneys General,
West Palm Beach, for appellee.

PER CURIAM.

AFFIRMED.

LETTS, C.J., BERANEK and DELL, JJ., concur.

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 82-537

DOLORES B. GARBIN,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

MOTION FOR REHEARING

COMES NOW Appellant, DOLORES B. GARBIN, by and through her undersigned attorney and moves this Honorable Court for a rehearing of the decision filed March 2, 1983 and in support thereof states as follows:

1. This motion is made in accordance with the provisions of Fla. R. App. P. 9.330(a).

2. The request is respectfully made for the Court to withdraw the *per curiam* affirmance and issue a written opinion that would enable counsel for the Appellant to seek review by the Florida Supreme Court. The recent amendment to the Florida Appellate Rules precludes review by the Florida Supreme Court if the District Court has not issued a written opinion. This rule, in effect, denies Appellant the right to petition the highest Court of the State of Florida for review of his case. Appellant respectfully submits that even if

this Court continues to affirm judgment and sentence of the Trial Court, a written opinion would enable the Appellant the opportunity for further judicial review on the issues presented.

3. Appellant respectfully submits that the language found in *Hawthorne v. State*, 408 So.2d 801 (Fla. 1st DCA 1982), cert. denied, 415 So.2d 1361 (Fla. 1982) could be applied to the matter *sub judice*, and even if this Court rejects the reasoning of *Hawthorne*, a written opinion would enable Appellant to seek review in the Florida Supreme Court pursuant to "Florida Rule of Appellate Procedure" 9.030(a)(2)(A)(IV) or 9.030(a)(2)(A)(VI).

4. Appellant further respectfully requests this Court to certify to the Florida Supreme Court, pursuant to "Florida Rule of Appellate Procedure" 9.030(a)(2)(A)(V) (a question to be of great public importance) the following question:

> "Does *Zeigler v. State*, 402 So.2d 365 (Fla. 1981) absolutely bar the introduction of psychiatric testimony offered by a Defendant in a case in which the defense is self defense and the expert testimony is being offered by the Defendant to aid the jury in interpreting the surrounding circumstances as they affected the reasonableness of the Defendant's fear of imminent injury or death?"

5. Appellant further submits that the record fails to support a finding that the Appellant acted in a manner that "evinced a depraved mind regardless of human life".

The State's evidence failed to rebut the Appellan't assertion that she "got scared . . . really got scared . . . if Franco got hold of me, death was imminent."

Without any cross-examination by the prosecutor, the Appellant's testimony cannot simply be ignored. *Diaz v. State*, 387 So.2d 978 (Fla. 3rd DCA 1980), pet. for reh. denied, 397 So.2d 779 (Fla. 1981).

6. There was absolutely no showing at trial that the act of the Appellant was done from "ill will or hatred, spite or an evil intent" rather than out of fear. The element of "depraved mind" necessarily requires a showing of ill will or hatred, spite or an evil intent. *Marasa v. State*, 394 So.2d 544 (Fla. 5th DCA 1981), pet for reh. denied, *State v. Marasa*, 402 So.2d 613 (Fla. 1981); *Luke v. State*, 204 So.2d 359 (Fla. 4th DCA 1967), cert denied 393 U.S. 932, 89 S.Ct. 290, 21 L.Ed.2d 269 (1968); *Davis v. State*, 397 So.2d 1005, 1007 (Fla. 1st DCA 1981).

7. Acting with a depraved mind regardless of human life is an indispensable element of the crime of second degree murder. *Pierce v. State*, 376 So.2d 417 (Fla. 3rd DCA 1979); *Martinez v. State*, 360 So.2d 108 (Fla. 3rd DCA 1978); *Raneri v. State*, 255 So.2d 291 (Fla. 1st DCA 1971); *Harper v. State*, 411 So.2d 235 (Fla. 3rd DCA 1982).

Since the Appellant's testimony was not negated or contradicted through cross-examination, the Court must not ignore Appellant's version at the time of trial.

Accordingly, the only possible way to elevate the State's case to include the element of "depraved mind regardless of human life" would be to pyramid inference upon inference, i.e., that the shooting was "done from ill will or hatred, spite or an evil intent".

There is *no* documentary or testimonial evidence from which the Court can conclude, as a matter of law, that the element of "depraved mind regardless of human life" was proven beyond a reasonable doubt.

8. The Appellant's version of the shooting is not susceptible of being interpreted to establish the requisite "depravity" element of the offense charged; the State's case in chief was factually and legally insufficient to establish the element of "depraved mind regardless of human life".

9. Although in both the *Pierce* case, *supra*, and the *Martinez* case, *supra*, the evidence was held sufficient to create a jury issue as to whether the accused had used excessive force (thus warranting a conclusion that the evidence would at least sustain a conviction of manslaughter), it is submitted that the evidence in the instant case failed to sufficiently rebut Appellant's claim of self defense so as to create a jury issue.

At the very least, the Court should reduce the conviction to manslaughter.

10. Without an expression in writing as to either the facts of the case or the legal issues raised in the Appeal, the Appellant is left legally helpless to pursue her right to seek further appellate review within the State Courts.

The issue raised in Point I of Appellant's initial Brief, we respectfully submit, warrants a full discussion by the Court or certification to the Supreme Court on the very narrow point as set forth in *Ziegler, supra*, at 373 and *Tremain v. State*, 336 So.2d 705 (Fla. 4th DCA 1976) at 707.

11. *Ziegler* involved the guilt phase of a first degree murder case—the issue of guilt or innocence was never considered by the jury as it pertained to the proffered expert testimony. Further, it was the *mental state* of the defendant that was under evaluation, not the *emotional* condition.

12. The *mental state* of the Appellant was not the subject matter of the proffer of Doctor Cohn's testimony; it was the *emotional condition* of the Appellant that was the focal point of the proffered testimony.

13. The Court should reconsider the holdings and rationale of *Fouts v. State*, 374 So.2d 22 (Fla. 2nd DCA 1979) and *United States v. Hearst*, 412 F. Supp. 889 (N.D. Cal. 1976) and apply the same standards to the matter *sub judice*.

WHEREFORE, based upon the case law and argument set forth above, it is respectfully submitted that the Court grant Appellant's Petition For Rehearing and afford her the following alternative relief:

1. Affirm the conviction but withdraw the per curiam affirmed decision and write an opinion.

2. Affirm the conviction but reduce the offense to manslaughter.

3. Reverse the conviction and remand for a new trial.

Respectfully submitted,

VARON & STAHL, P.A.

BY /s/ HARRY GULKIN
HARRY GULKIN
Attorney for Appellant
2432 Hollywood Blvd.
Hollywood, FL 33020
305-923-1548

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished this 10th day of March, 1983 to Joy B. Shearer, Assistant Attorney General, 111 Georgia Ave., Suite 204, West Palm Beach, FL 33401.

/s/ HARRY GULKIN
HARRY GULKIN
Attorney for Appellant

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 82-537

DELORES B. GARBIN,

Appellant,

v.

STATE OF FLORIDA

Appellee.

April 13, 1983

BY ORDER OF THE COURT:

ORDERED that Appellant's March 11, 1983 Motion for Rehearing is denied.

I hereby certify the foregoing is a
true copy of the original court order.

/s/ CLYDE L. HEATH
CLYDE L. HEATH,
CLERK.

cc: Harry Gulkin, Esq.
Joy B. Shearer, Assistant Attorney General

MANDATE
from
DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FOURTH DISTRICT

This cause having been brought to this Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Gavin K. Letts, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and the seal of the said Court at West Palm Beach, Florida on this day.

Date: April 29, 1983

Case No. 82-537

County of Origin Broward

T. C. Case # 81-2355 CF 10

Style: Delores B. Garbin V. State

/s/ DEBBIE PICKLESON
for Clerk of the District Court
of Appeal of the State of
Florida, Fourth District

cc: Hon. Robert E. Lockwood, Clerk (Original)

Harry Gulkin, Esq.

Attorney General

NO. 82-2163

IN THE
SUPREME COURT OF THE UNITED STATES

October term, 1983

DOLORES BALL GARBIN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

JIM SMITH
Attorney General
Tallahassee, Florida

MAX RUDMANN
Assistant Attorney General

LYDIA M. VALENTI
Assistant Attorney General
111 Georgia Avenue, R. 204
West Palm Beach, FL 33401
(305) 837-5062

Counsel for Respondent

QUESTION PRESENTED

WHETHER THE TRIAL COURT CORRECTLY EXCLUDED THE TESTIMONY OF THE EXPERT DEFENSE WITNESS BECAUSE THE PETITIONER FAILED TO MEET THE MINIMAL THRESHOLDS NECESSARY TO THE INTRODUCTION OF SUCH TESTIMONY?

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(CONTINUED)

NO. 82-2163

IN THE

SUPREME COURT OF THE UNITED STATES

DOLORES BALL GARBIN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF FLORIDA

TO: Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

Respondent, State of Florida, prays that the Writ of Certiorari to review a Final Judgment of the

Fourth District Court of Appeal of the State of Florida which court affirmed, without opinion, the conviction of Murder in the Second Degree, be denied.

OPINIONS BELOW

The Fourth District Court of Appeal issued its decision in the form: Per Curiam Affirmed (Petitioner's Appendix 1).

Petitioner filed a Motion For Rehearing to which Respondent filed a Response In Opposition contending Petitioner's Motion was essentially a reargument of the matters raised on direct appeal. (Respondent's Appendix 1). The Motion was denied.

Thereafter, a mandate was issued by the Fourth District Court of Appeal

in the State Court (Petitioner's App. 4).

JURISDICTION OF THIS COURT

Petitioner seeks to invoke the jurisdiction of this Court under Title 28 U.S.C.§1257(3) and this Court's Rules 17 through 23.

CONSTITUTIONAL AMENDMENTS INVOLVED

SIXTH AMENDMENT

The Sixth Amendment to the United States Constitution provides, inter alia:

> "In all criminal prosecutions, the accused shall enjoy the right . . .to have compulsory process for obtaining witnesses in his favor . . ."

FOURTEENTH AMENDMENT

The Fourteenth Amendment to the United States Constitution provides, inter alia:

> ". . .nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

STATEMENT OF FACTS

Respondent accepts the Petitioner's Statement of the Facts but adds that the defense expert witness was never qualified in the area of the battered woman syndrome nor did the proffered testimony show how Petitioner's circumstances and reactions were consistent with such a syndrome.

REASONS FOR DENYING THE WRIT

The propriety of receiving into evidence expert testimony rests within the sound discretion of the trial court, United States v. Fosher, 590 F. 2d 281 (1st Cir. 1979), and where the testimony is not relevant and material, there is no abuse of that discretion in excluding it. Washington v. Texas, 388 U.S. 14, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). In United States v. Valenzuela-Bermal, ___ U.S. ___, 102 S. Ct. 3340, 73 L. Ed. 2d 1193 (1982), this Court emphasized that:

> In Washington, this Court found a violation of this clause of the Sixth Amendment when the defendant was arbitrarily deprived of "testimony [that] would have been relevant and material, and . . .vital to the

to the defense."
(emphasis in the original)

Indeed this Court held that more than mere absence of testimony is necessary to establish a Sixth Amendment violation. There must be a plausible showing by the defendant of how the testimony would have been both material and favorable to his defense. See also United States v. Verkuilen, 690 F. 2d 648, 659 (7th Cir. 1982) (in which the court determined that there is no violation of the rights of an accused unless the potential witnesses could have provided relevant and material testimony to the defense); United States v. Fosher, 590 F. 2d 381, 383 (1st Cir. 1979) (in which the court excluded expert testimony because

of the limited reliability and relevance, and because the testimony could have created a substantial danger of undue prejudice); United States v. DeStefano, 476 F. 2d 324, 330 (7th Cir. 1973) (in which the court held that there is no constitutional violation of the Sixth Amendment right unless the excluded witness could have produced relevant and material testimony for his defense).

The case at bar is unlike the situation in Washington in which a state procedural statute totally precluded state witnesses from testifying despite a showing that the testimony of such witnesses was relevant and material to the defense. In the case

at bar, the testimony would have been admissible if that testimony had been shown to be material and relevant. However, Petitioner failed to meet the threshold requirement for admissibility. She failed to demonstrate that her case fell within the parameters of Hawthorne v. State, 408 So. 2d 801 (Fla. 1st DCA), cert. denied, 415 So. 2d 1361 (Fla. 1982).

Hawthorne involves expert testimony concerning the "battered woman syndrome." Hawthorne makes the admission of expert testimony concerning the battered woman syndrome "subject to the trial court determining that [the witness] is qualified [as an expert in the battered woman's syndrome], and that the

subject is sufficiently developed and can support an expert opinion." Id. at 806. In the case at bar, the Petitioner never qualified the psychologist as an expert on the battered woman syndrome. The defense proffer failed to show how the circumstances and reactions of the Petitioner were consistent with the battered woman syndrome. Hence, Hawthorne is inapplicable.

The right to present a full defense and to receive a fair trial does not entitle a criminal defendant to place before the jury evidence which is normally inadmissible. United States v. Bifield, 702 F. 2d 351 (2nd Cir. 1983). Accordingly, where the Petitioner failed to

establish the relevancy and materiality of the testimony and to qualify the expert in the area of the battered woman syndrome, the Petitioner cannot now claim that the court under the Hawthorne rationale abused its discretion in failing to allow the Petitioner to call the psychiatrist as a defense witness. Because there was no abuse of discretion and no violation of the Sixth Amendment right, this Court should deny the Writ.

CONCLUSION

The ruling by the trial court excluding the testimony of a defense witness was correct because that testimony was neither relevant, nor probative, nor material and, consequently, there was no denial of the rights of the Petitioner.

There was no abuse of discretion constituting a denial of due process because the Petitioner failed to meet the threshold requirement of materiality and relevance mandated by existing case law.

The Writ of Certiorari should be DENIED.

Respectfully submitted,

JIM SMITH
Attorney General
Tallahassee, Florida

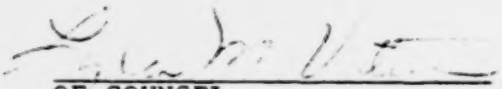
MAX RUDMANN
Assistant Attorney General

LYDIA M. VALENTI
Assistant Attorney General
111 Georgia Avenue - R. 204
West Palm Beach, FL 33401
(305) 837-5062

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing brief in opposition to Petition for Writ of Certiorari has been furnished this _____ day of _____, 1983, to Harry Gulkin, Esquire, Varon, Bogenschutz, Williams and Gulkin, P.A., 2432 Hollywood Boulevard, Hollywood, Florida 33020.



OF COUNSEL

APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT

DOLORES B. GARBIN,	)	
	)	
Appellant,	)	CASE NO. 82-537
	)	
v.	)	
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
	)	
	)	

RESPONSE IN OPPOSITION TO MOTION FOR REHEARING

Appellee, the State of Florida, through undersigned counsel, responds in opposition to the motion for rehearing filed by the Appellant, and states:

1. The Appellant's lengthy motion is essentially a reargument of the two points she raised on appeal. These

points were fully addressed in the briefs and oral argument. Reargument is not the function of a motion for rehearing. Fla. R. App. P. 9.330(a).

2. This court's decision is consistent with the controlling caselaw, Ziegler v. State, 402 So. 2d 365 (Fla. 1981) and Tremain v. State, 336 So. 2d 705 (Fla. 4th DCA 1976). As discussed in Appellee's answer brief at pages 8-9, Hawthorne v. State, 408 So. 2d 801 (Fla. 1st DCA 1982) is inapplicable to the instant case. Thus, there is no need for this court to write an opinion as its decision did not create conflict in the law and there is no need to certify a question, since the question posed by Appellant was definitively answered in Ziegler.

Appendix 2

3. As to the Appellant's contention the evidence was insufficient, this issue has been thoroughly discussed previously. Suffice it to say that from the evidence the victim was shot first in the back while he was unarmed, lying in bed and obviously facing away from the Appellant, the jury could reasonably find the Appellant guilty of first degree murder.

WHEREFORE, the Appellee respectfully requests that the Appellant's Motion for Rehearing be denied.

Respectfully submitted,

JIM SMITH
Attorney General
Tallahassee, Florida

Appendix 3

/S/ JOY B. SHEARER
JOY B. SHEARER
Assistant Attorney General
111 Georgia Avenue - R. 204
West Palm Beach, FL 33401
(305) 837-5062

Counsel for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished this 16th day of March, 1983 by United States Mail to HARRY GULKIN, ESQUIRE, 2432 Hollywood Boulevard, Hollywood, Florida 33020.

/S/ JOY B. SHEARER
OF COUNSEL